IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 267 of 2003

with

CRIMINAL MISC.APPLICATION No 4594 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHUTA AARJAN BRAHMAN

Appearance:

1. Criminal Appeal No. 267 of 2003
   Mr RC Kodekar, A.PUBLIC PROSECUTOR for Appellant No.
   ..... for Respondent No. 1-2
2. Criminal Misc.Application No. 4594 of 2003
   PUBLIC PROSECUTOR for Appellant No.
   RULE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/04/2005

ORAL JUDGEMENT

(per: HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

The State of Gujarat has preferred this appeal under section 378 of the Code of Criminal Procedure, 1973 to challenge the order of acquittal passed by the learned Addl.Sessions Judge, Jamnagar in Sessions Case No.22/95 dated 11.10.2002. The respondents were prosecuted for the alleged commission of offence punishable under sections 341, 376 and 506 (2) read with section 114 of IPC. According to the prosecution, the victim Roopiben, at the relevant time, was aged 15 years. She had lodged a complaint dated 12.7.1993 wherein she had stated that about 5 days before she had gone to the flour mill and while returning home which is situated in the sim of village Gaga, when she had reached near the house of respondent no.2, the present respondents forcibly took her to a room and kept her there till evening. During the period, both the respondents committed rape on her. It was stated that each of the respondents had sexual intercourse with her against her wish for three times. Thereafter, she managed to escape from the custody of the respondents. It was further stated that she was given threats by the respondents that if she complains against them, she will be killed. She, therefore, left the place and went to Okha. There she met a lady called Amrutaben and she directed her to Vikasgruh. At the Vikasgruh, her uncle and one Markhi Jetha came there to take her back. Thereafter, a complaint was filed against the respondents at Kalyanpur police station on the strength of which the police commenced investigation and arrested the respondents, who were later tried in the court of Addl.Sessions Judge, Jamnagar.

2. The learned Judge, at the end of the trial, after appreciating the evidence led by the prosecution, came to the conclusion that the prosecution has not been able to prove its case against the respondents. He also concluded that the prosecution was unable to prove that she was wrongfully confined in the room by the respondents.

3. We have carefully perused the judgment of the trial court. In para 25 of the judgment, the trial court has narrated as many as fifteen circumstances which, in

its opinion, did not make the case of the prosecution acceptable. It is observed by the learned Judge that the prosecutrix has given three different versions at different stages with regard to the incident. He has also found that the version of the prosecutrix that she was forcibly dragged inside the room, was not believable since no evidence indicating forcible dragging inside the room was produced by the prosecution. The learned Judge has also taken into consideration the fact that after escaping from the clutches of the respondents, the victim Roopiben did not straightaway gone home but instead she boarded the truck and went to Okha. In his opinion, the conduct of the victim was quite unnatural. It is also noticed by the learned Judge that even from the flour mill other route leading to the house of the victim which is shorter than the one which was taken by her. He has, therefore, observed that the natural conduct on the part of the victim would be to take the shorter route but instead, she has taken a longer route which passes by the residence of respondent no.3. There is some indication in the evidence that the victim was already having some affair with respondent no.2. The learned Judge has further taken into consideration the legal aspect of the case which is produced by the prosecution. The learned Judge has of course observed that according to the prosecution, she was subjected to sexual intercourse thrice by each of the respondents and as per the version given by the victim, on every occasion, there was seminal discharge in her private part. However, during the medical examination, nothing of the sort was found. He has also held that even when her uncle had gone to the Vikasgruh to take her back home, she has refused to go with him. In the opinion of the learned Judge, the behaviour of the victim was also quite unnatural.

4. So far as the age of the girl is concerned, no reliable proof has been produced that she is aged 15 years. As against that the oscification test suggests that she is around 19 years.

5. We have carefully perused the discussion of the trial court on these aspects. In our opinion, even prima facie, the trial court does not seem to have committed any error in drawing the aforesaid conclusions. In view of the same, no useful purpose would be served by admitting this appeal to final hearing. The same is therefore, dismissed in limine.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp